QSNTS
Queensland South Native Title Services

Level 4, 293 Queen Street
PO Box 10832, Adelaide Street
Brisbane QLD 4000
ABN: 88 114 581 556

P: (07) 3224 1200 | 1800 663 693
F: (07) 3229 9880
E: reception@qsnts.com.au
W: www.qsnts.com.au

14 March 2025

The Honourable Justice Mordecai Bromberg
President
Australian Law Reform Commission

Via: *ALRC Future Act Review submissions portal*
CC: nativetitle@alrc.gov.au

Dear Justice Bromberg,

We refer to the Review of the Future Acts Regime (the **Review**), referred to the Australian Law Reform Commission (**ALRC**) by the Commonwealth Attorney-General on 4 June 2024.

We wish to make submissions in response to the Issues Paper and on other relevant matters to which the ALRC might give consideration in conducting the Review.

Queensland South Native Title Services (**QSNTS**) is a native title representative body with statutory functions under s 203B of the *Native Title Act 1993* (Cth) (**NTA**).

In this submission, we refer to QSNTS constituents, who include:

a. Native Title Parties, comprising
    i. Native title holders, represented by Registered Prescribed Bodies Corporate (RNTBCs), or
    ii. Native title claim groups, represented by Applicants who have made a Federal Court application to have their native title rights and interests recognised, and
b. Aboriginal and Torres Strait Islander people who have not yet made a claim or been determined to hold native title rights and interests by the Federal Court but who nevertheless have rights and responsibilities under their traditional laws and customs.

For simplicity throughout this submission, we also refer to all departments of the Commonwealth and the Queensland governments that exercise powers to issue rights and interests in land and waters as government issuing authorities. We refer to all parties who propose future acts, including private and public entities, as proponents.

This submission draws on the observations, concerns and experiences of our constituents and of QSNTS' staff in carrying out QSNTS' functions under s 203B of the NTA. This submission steps through QSNTS observations and comments with regard to:

1. the **Preamble to the NTA** and how the future acts generally undermines the achievement of the objectives, and the Australian people's express intentions for, the NTA;

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2. the **lack of protections** afforded to native title rights and interests under the future acts regime;
3. the **lack of leverage** afforded to Native Title Parties in agreement making over how future acts are undertaken and on compensation payable for the effects of future acts on native title rights and interests;
4. challenges involved in **managing interests in compensation** paid in relation to future acts; and
5. **other effects of the future acts regime** on QSNTS constituents.

Finally, at part 6. we offer the ALRC a wish list of reforms to the future acts regime.

1. Preamble to the NTA

In general, it is QSNTS' view that the future acts regime does not provide sufficient leverage or protections to Native Title Parties to achieve the material, practical or symbolic objectives of the NTA for native title holders, as set out in the Preamble to the Act.

The Preamble sets out the Parliament's overarching objectives for the NTA in the following passage:

> *The people of Australia intend:*
>
> *(a) to rectify the consequences of past injustices by the special measures contained in this Act, announced at the time of introduction of this Act into the Parliament, or agreed on by the Parliament from time to time, for securing the adequate advancement and protection of Aboriginal peoples and Torres Strait Islanders; and*
>
> *(b) to ensure that Aboriginal peoples and Torres Strait Islanders receive the full recognition and status within the Australian nation to which history, their prior rights and interests, and their rich and diverse culture, fully entitle them to aspire.*

In QSNTS' view, the future acts regime does not secure adequate advancement and protection of Aboriginal and Torres Strait Islanders in relation to their rights and interest in land and waters. Nor does it ensure that Aboriginal and Torres Strait Islanders receive the full recognition and status within the Australian nation to which history, their prior rights and interests, and their rich and diverse cultures fully entitle them to aspire. QSNTS' constituents experience project proponents' observance of procedural rights as a tick-a-box exercise in which the role and aspirations of native title holders are accorded low or tokenistic status by proponents. As a result, both project outcomes and native title holders miss out on meaningful opportunities to recognise and draw benefits from the unique status of Aboriginal and Torres

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Strait Islander peoples, their rich and diverse cultures, and their long-standing knowledge of Country.[1]

The Preamble goes on to state that

> *Justice also requires that, if acts that extinguish native title are to be validated or to be allowed, compensation on just terms, and with a special right to negotiate its form, must be provided to the holders of the native title...*
>
> *…It is particularly important to ensure that native title holders are now able to enjoy fully their rights and interests. Their rights and interests under the common law of Australia need to be significantly supplemented. In future, acts that affect native title should only be able to be validly done if, typically, they can also be done to freehold land and if, whenever appropriate, every reasonable effort has been made to secure the agreement of the native title holders through a special right to negotiate.*

Despite this declaration of the Preamble, the allowance or validation of a future act is not conditional upon the payment of compensation but on upholding procedural rights that do not guarantee the payment of compensation in a timely fashion. Moreover, the lack of leverage enjoyed by native title holders in negotiating compensation may oblige them to accept compensation on terms that would not be considered "just" by a Court or a holder of other rights in land whose rights were to be similarly affected. Under the right to negotiate and several categories of future act, the native title holders may only be able to seek any compensation payable for a future act that extinguish native title after the act has been done, which reduces their leverage and ability to protect sites of significance.

In addition, the future acts regime does not support native title holders' full enjoyment of native title rights and interests where they entail the protection of significant sites and songlines from physical or spiritual damage. QSNTS constituents' leverage in future acts negotiations does not allow for projects or elements parts thereof to be vetoed and rarely for QSNTS constituents to achieve protection as opposed to compensation.

Finally, the Preamble specifically recognises that

> *[i]t is important that appropriate bodies be recognised and funded to represent Aboriginal peoples and Torres Strait Islanders and to assist them to pursue their claims to native title or compensation.*

In QSNTS' view, compensation for the effect of a future act on native title rights and interests is, and should be treated as, an integral part of how future acts are considered and undertaken. RNTBCs representing native title holders in negotiations about agreements for the payment of compensation in relation to future acts are rarely sufficiently resourced to undertake these negotiations fully informed and freely. With inadequate funding to pursue compensation for

[1] Including land, inland waters and sea-country.

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future acts, RNTBCs rely on funding from the proponents of those future acts and on the resources of QSNTS, which itself receives insufficient funding to provide these services. As a consequence, limited information and leverage may be available to RNTBCs and the native title holders they represent when negotiating compensation for future acts.

2. Lack of Protections

It is often with disappointment that native title holders discover the limited protection that a determination of native title affords their native title rights and interests in a determination area. In addition to the well-recognised statistical likelihood that a future act determination will be made in the interests of the future act proponent, native title holders experience even less power to protect their native title rights and interests when proposed future acts only invoke the right to be informed and / or the right to comment, and when the expedited procedure is applied to a proposed future act. This disappointment can lead to a loss of faith in the native title system and the aims of the NTA, as well as disengagement from other opportunities to negotiate better outcomes from other future act processes. The lack of protection afforded under the regime can also undermine the dignity and spiritual wellbeing of Native Title Parties.

2.1 The weaker procedural rights

Under the NTA, the types of proposed future acts that give rise to the right to be informed or the right to comment provide very little opportunity for Native Title Parties to seek protections for their native title rights and interests. The NTA enshrines no requirement nor leverage by which native title holder can prevent damage to a site, songline or landscape of significance within a claim or determination area for which they have responsibilities or continuing practices under traditional law and custom.

QSNTS notes that the quantity and quality of information that proponents provide about the future acts they propose rarely adequately informs the relevant Native Title Party about how the proposed future act will affect their Country. When QSNTS clients request further information to help them understand the impact of a proposed future act, proponents and government issuing authorities rarely respond and, when they do, most respond that they bear no obligation to provide further information.

Some categories of future acts clearly have a substantial impact on native title rights and interests and on Country, however they give rise to procedural rights that do not encourage proponents to engage meaningfully with Native Title Parties. For example, section 24KA future acts allow the construction of facilities for the delivery of services to the public, which can be undertaken by government and private entities. Some of these constructions can be quite substantial, for example a marina, a sewerage facility, irrigation channel or electricity transmission or distribution facility. While Native Title Parties, as members of the public serviced by these facilities, may stand to benefit from their construction, they are not given the

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right to negotiate where these facilities are constructed and how. QSNTS terms the procedural rights triggered by ss 24HA and 24KA "the right to squeak".

Case Study 1

A Native Title Party received a future act notice and exercised their right to comment by requesting that the government issuing authority advise the proponent of the client's wish to engage with them and meet by a particular date.

The government issuing authority did not respond to the Native Title Party and the proponent made no contact. The Native Title Party never learned whether their attempt to initiate a relationship with the proponent was communicated or could have been reciprocated.

On occasion, notices of future acts that give rise to the right to comment are issued for a number of future acts or for large areas that may cover multiple determination and claim areas. In such cases, government issuing authorities do not always provide sufficient information for Native Title Parties to ascertain whether or how their native title rights and interests in the area will be affected, if at all. Similarly, general notification often fails to provide sufficient information for the Native Title Party to ascertain the location, type, duration or impact of the proposed future act, nor details of the number of permits or activities that may thereby occur. Alternatively, a notice may provide information that is highly specific or technical, which is too difficult for the Native Title Party to understand. These practices undermine the ability of Native Title Parties ability to make meaningful comments about the proposal, including about how the impacts might be minimised.

QSNTS' experience is that most employees of the government issuing authorities have limited understanding of native title and the importance of engaging with Native Title Parties, and it shows.

Case Study 2

It is not uncommon for the government issuing authorities to issue a 'General Fisheries Permit Class Notification' under s 24HA. This type of notification usually provides for up to 100 future acts to be approved within a certain period over a large area. This usually covers most or all of Queensland's waters. These notifications are pre-emptive as they require the Native Title Parties to comment on future acts prior to any proponent applying for a permit from the government issuing authorities.

In these circumstances, Native Title Parties are neither informed of nor able to ascertain the number of permits that will be granted in relation to their Country and the activities allowed under the permits. It is difficult for any Native Title Parties to exercise their right to comment effectively when the notifications provide for a wide range of activities that may be undertaken under future permits with little to no information about these activities. This uncertainty creates some apprehension amongst the Native Title Parties as to what is happening on their Country.

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QSNTS is aware that the government issuing authorities issuing these generic notifications to streamline consultations with the Native Title Parties. However, this practice does not enable Native Title Parties to give consent to the proposed activities that is genuinely free and informed.

On the other hand, where proponents and government issuing parties respond to Native Title Parties' requests for more information, they may find Native Title Parties are less concerned about the impacts of the proposed future act. For example, Native Title Parties may not be concerned if certain activities occur at particular times of the year, such as outside the breeding season of their totem or as long as ceremonial business is not planned to occur at that time. Such exchanges could enhance relationships between parties and support mutual understanding, if not benefits.

Providing more information in response to Native Title Parties' requests might also enable to Native Title Parties to provide helpful guidance or information to the proponent in relation to their proposed project or activity. This guidance or information may assist the proponent to minimise their impact on particular native title rights and interests or the Country to which they attach, as well as benefit the achievement of their own objectives.

QSNTS is also aware that Native Title Parties are often eager to meaningfully engage with proponents while projects or activities are occurring on their determination areas and, in cases such as research projects, are keen to be informed of the outcomes. However, in the absence of any obligation to respond to the comments of Native Title Parties and of any response, Native Title Parties remain uncertain as to whether proponents have received and considered their comments and engagement aspirations.

Regardless, no part of the NTA requires proponents nor the government issuing authority to take the comments of affected Native Title Parties into account when undertaking a future act or the activities that it permits. This renders the procedural right to comment a particularly weak protection of native title rights and interests. QSNTS staff and constituents have described it as cursory and tokenistic.

2.2 The wrong procedural rights

Quite often notice of a future act that QSNTS receives on behalf of a Native Title Party does not categorise the future act in accordance with the description of the future act. Such a notice can trigger procedural rights that are weaker than the procedural rights that a correct or more suitable category of future right would. On numerous occasions QSNTS has challenged the categorisation of the future act prior to the end of the notification period. The government issuing authorities have either dismissed these challenges or provided no response, after which the future act proceeded. The recourse available to Native Title Parties and native title representative bodies in such circumstances is unclear, noting the limited time available to

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clarify the category and exercise the appropriate procedural rights before the future act can be validly done.

Case Study 3

A government issuing authority issued a notice under s 24HA, which applied to future acts involved in the management of water and airspace that comprise legislation or the grant of a lease, licence, permit or authority under legislation. The notice detailed the proposed construction of a jetty for the launching of watercraft. In QSNTS' view, the future act would be more appropriately categorised under s 24KA, which permits the construction of facilities for services to the public. QSNTS raised this concern in comments offered on behalf of the Native Title Party, however the government issuing authority was under no obligation to respond under the NTA.

Section 24HA gives rise to the right to comment, whereas s 24KA gives rise to the same procedural rights as the Native Title Party would have in relation to the act on the assumption that they instead held an exclusive agricultural lease, or a non-exclusive pastoral lease or ordinary title. Categorising the future act as one to which s 24HA applies afforded the Native Title Party weaker procedural rights than if s 24KA applies. The Native Title Party therefore enjoyed less ability to protect their native title rights and interests by exercising their procedural rights under s 24HA, even though this was arguably not the appropriate category of future act to apply.

Case Study 4

A government issuing authority issued a notice under s 24HA that described the proposed activity as maintenance work including the extraction of sand from the nearby beach without specific reference to the legislation under which the activity would be permitted. Well before the deadline for responding to the notice, QSNTS contacted the government issuing authority on behalf of the Native Title Party to exercise the Native Title Party's right to comment. QSNTS raised concerns with the government issuing authority about the activity and also about the activity not falling within the definition of s 24HA future acts. QSNTS also sought clarification of the type of permit proposed, including the relevant section of any enabling legislation.

After QSNTS had sought a response from the government issuing authority multiple times, the government issuing authority provided a response on the day of the deadline for the Native Title Party to respond to the future act notice. That response was limited to a broad and generic statement about the proposed activity and did not engage with the specific concerns raised about the maintenance work and sand extraction.

The activities conducted under the permit issued have greatly affected the determination area, causing beach erosion and negatively impacting the island's inland natural waters. The Native Title Party has expressed that they feel cheated by the system where the government issuing authority is able to miscategorise a future act and allow the resulting effects on Country without a clear way to hold the government issuing authority to account.

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The current categories of future acts in the NTA do not clearly account for the impact on native title rights and interests of clean energy projects, new technologies or methods of mineral or petroleum extraction, new kinds of land or sea-based infrastructure projects and the changing value of natural resources such as inland waters. In addition, the procedural rights that arise under the categories that may be applied to such proposals may be clearly mismatched with the potential impact of the proposed future act on given native title rights and interests.

It is QSNTS' view that proliferating future act categories would not remedy the potential problems of outdated future act categories, and that creating broad categories, and strengthening and simplifying the procedural rights that arise in relation to those categories would create a more robust, navigable and future-proofed future acts regime.

2.3 Who says it's low impact?

Whether to justify the application of expedited procedure or to categorise a future act as low impact under s 24LA of the NTA, QSNTS' clients and staff question how the Queensland government makes an informed judgement that a proposed future act will have a low impact in a given area. The Queensland government relies solely on the potential impact future acts will have on the land when categorising a future act under s 24LA or applying the expedited procedure and does not consult with QSNTS nor Native Title Parties about the potential impact of proposed future acts on relevant Native Title Parties' Country and native title rights and interests.

QSNTS has been told that the Queensland government relies on data contained on its cultural heritage register to assess the impact of a proposed future act and only does so when an objection to the application of expedited procedure has been lodged. The cultural heritage register appears to contain a very limited number of sites of significance to native title rights and interests in all determination and claim areas that QSNTS has knowledge of. In addition, sites listed on the cultural heritage register are identified according to a single GPS coordinate which cannot convey the full area of a site if the site is broader than a tree.

Apart from the limited information available on the cultural heritage register, and the categories set out under Division 3 of the NTA, the basis on which the Queensland government forms an opinion of the impact a proposed future act will have is unclear. The definition of "affect" in s 237 of the NTA does not provide guidance on matters to be considered to assess the quantitative or qualitative impact of a future act.

This leaves great room for assumption and misunderstanding in relation to the impact of future acts on the Native Title Party's Country, native title rights and interests and tangible and intangible heritage. For example, any future act that grants a right to enter an area may enable a woman to enter into a site that is sacred and exclusively for men. This could have a significant impact on that site, on the native title rights and interests that relate to that site and on Native Title Party, even if no physical or visible damage might be caused by the future act.

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Furthermore, the Queensland government does not appear to consider the cumulative effect of small acts, such as the drilling of sampling holes or the creation of tracks, on Country, native title rights and interests and tangible and intangible heritage to have a greater impact, whereas that may not be the experience of the native title holders themselves.

In Queensland, for a permit granted under the expedited procedure process where the Native Title Protection Conditions (**NTPCs**) apply, notification is only required where disturbance is likely to happen, or activities are expected to impact the land. While the expedited procedure process does allow for objections, the impost and statistical improbability of successfully objecting to the characterisation of proposed future acts as low impact in order to justify applying expedited procedure does not meaningfully empower Native Title Parties to protect their Country, native title rights and interests and tangible and intangible heritage.

2.4 Resourcing future act responses

Due to the short time frames within which to gather and assess information about the potential impact of a proposed future act, the specialist expertise that may be required (such as that of an archaeologist, anthropologist, economist or environmental scientist), and the limited supports available to Native Title Parties, it can be costly and difficult to respond effectively to all future act notices in a way that optimises the outcomes for Native Title Parties.

For example, QSNTS staff juggle furthering claim work, corporate compliance and cultural heritage work with responding to future act notices within short timeframes. This can lead to a rushed, or otherwise suboptimal, consideration of the proposed future act and its likely impacts on native title and advocacy for the client. Under resourcing does not support Native Title Parties to make free and informed decisions or actions to protect their native title rights and interests.

2.5 Excessive application of expedited procedure

In QSNTS' experience, the relevant Queensland government issuing authority applies the expedited procedure to all proposed future acts that are exploration permits for minerals (**EPM**). QSNTS understands that the Queensland government issuing authority relies on the proponent having 'ticked in a box' as part of the application to accept an EPM as an act attracting the expedited procedure rather than on an informed assessment of whether the expedited procedure does apply under s 237 of the NTA.

The Queensland government issuing authority makes EPMs to which the expedited procedure applies conditional on the proponent's compliance with the Queensland government's NTPCs. The Queensland government issuing authority then relies on the fact that the grant of the EPM will be subject to the NTPCs to satisfy themselves that s 237 of the NTA applies to the application. This decision-making assumes that making an EPM conditional on compliance with the NTPCs is sufficient for the Queensland government issuing authority to be satisfied that the application satisfies s 237 of the NTA. The procedure does not allow for input from

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Native Title Parties in relation to the impact on their native title rights and interests, or according to the criteria it must meet for expedited procedure to apply under s 237 of the NTA.

In order for the Native Title Party to seek protection of their native title rights and interests, they are obliged to formally object to the expedited procedure and bear the burden of proving that at least one of the s 237 criteria does not apply to the EPM. It is only through lodging an objection that the Native Title Party has the opportunity to inform the Queensland government issuing authority of the potential impact of the proposed EPM. Objections are naturally adversarial in nature, as opposed to negotiations or consultations, which increases stress for the Native Title Party and extra work for QSNTS. This is a suboptimal way for a government issuing authority to inform itself of the impact that a EPM may have on native title and the ways that such future acts may be done to minimise that impact.

Objection applications are often unsuccessful. When the expedited procedure applies to a future act without objection, the Native Title Parties lose the ability to negotiate or inform how the future act proceeds and may affect Country at an early stage. Once the future act has been commenced or done, it can become apparent that the impact on native title rights and interests and on Country is not low. By then, it is difficult for the Native Title Party to meaningfully negotiate protections for sites, songlines or landscapes of importance to their native title rights and interests, their spiritual lives and their communities.

QSNTS staff also find that the National Native Title Tribunal (**NNTT**) directions in relation to objection applications require Native Title Parties to provide information that is highly culturally sensitive, without which the Native Title Party's application may not meet the standard of evidence required under s 237. Not all claim group members and native title holders trust that their sensitive information will be appropriately handled or feel comfortable sharing it. This lowers the chance that the Native Title Party's application will succeed.

2.6 Timing and finality of compensation

It is QSNTS' view that if the doing of a future act were conditional on the payment of compensation for the impact of that future act in all cases, the government issuing authority and/or proponent would be incentivised to more strenuously minimise the impact of the future act on native title rights and interests. In this way, ensuring that compensation is payable at the time of validation of any future act under the NTA would provide greater protections to Native Title Parties under the future act regime.

When compensation is payable under a s 31 deed of agreement, the Queensland government insists on the deed including a clause under which the Native Title Party agrees that compensation payable under an ancillary agreement to the deed is in full and final settlement of any current or future claim of compensation. These negotiations are usually conducted under time pressure to avoid referral to the NNTT, and there may be reduced incentive for a proponent to minimise the effect of the future act on the Native Title Party's Country, native title rights and interests and tangible and intangible heritage.

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One incentive to positively influence the impact of future acts on Country and native title rights and interests could be for the future acts regime to make the valid doing of a future act conditional on the payment of an instalment towards full and final settlement of compensation at the time of doing the future act. The final quantum of compensation required to settle the relevant party's liability would be calculable once the future act is done and the impact is clear.

2.7 Failing to protect Country

QSNTS acknowledges that the native title system recognises and addresses common law rights in property rather than tangible cultural heritage as it is defined and protected under state cultural heritage protection regimes. QSNTS notes with approval the manner in which Native Title Parties and constituents are recognised by Queensland's statutory cultural heritage protection regime.

However, while QSNTS accepts that cultural heritage is not interchangeable with native title rights and interests at law, we note that QSNTS constituents are nevertheless disappointed that recognition of their native title rights and interests does not of itself afford protection to their cultural heritage.

QSNTS constituents are negatively affected by the lack of protections that the future acts regime empowers them to employ in relation to Country. Native Title Parties are and feel responsible to their wider group for the impacts of future acts on Country, whether or not the Native Title Parties had any power under the NTA to prevent those future acts or their impacts. Failing to protect Country from adverse impacts can lead to disputes, shame and loss of status within a Native Title Party's family or group. Without understanding the lack of protections available under the NTA, members of family, native title holders and native title claim groups may question why a Native Title Party has "allowed" a future act to happen or to cause damage to Country.

Case study 5

At a recent Annual General Meeting for a Prescribed Body Corporate (**PBC**) that is supported by QSNTS, the directors of the PBC gave a presentation to the membership about the future act notices that the PBC receives and what the board does when it receives these notices. Members asked why the directors weren't vetoing the future acts and activities permitted by these future acts, or making sure that the activities were conducted in accordance with the native title holders' law and custom. Some members questioned why anything was happening on their country even though they had native title.

The PBC directors explained that the PBC doesn't have a right to veto these activities and that, in most cases, can only provide comments on the activity proposals.

Members responded by expressing their frustration that they had gone through the process of proving their connection to get native title but that native title doesn't really mean anything and hadn't tangibly changed things on the ground for the native title holders.

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Native Title Parties may feel the loss of a place, role, practice or connection, and for failing to uphold obligations or protect Country. Native Title Parties may experience spiritual harm when a future act negatively impacts their ability to carry out roles and responsibilities in relation to parts of the determination area, including to perform ceremony, protect areas of significance to them, protect and perpetuate totems, teach and transmit law and custom to new generations, avoid poison country, carry out secret business or maintain undisturbed songlines.

Being unable to protect Country can also lead to native title holders questioning the point of their efforts to evidence and claim their native title rights and interests. There is a clear lack of dignity inherent in the recognition of native title rights and interests that may then be overridden by future acts with little or no recourse. As one First Nations Engagement Officer of QSNTS puts it

> *It's like they take your house and then give you back one room but you can't really have a say about what happens in that room.*

3. Lack of commercial leverage

Key features of the future acts regime undermine the NTA's objective of ensuring that Native Title Parties can negotiate compensation on just terms in a form that they desire. Native Title Parties enjoy little-to-no leverage in negotiations with future act proponents and government issuing authorities due to weak procedural rights, the lack of perceived incentives for proponents to negotiate in good faith, the excessive application of expedited procedure by government issuing authorities, and the cost burden of exercising procedural rights. This lack of leverage is the major obstacle to Native Title Parties realising the potential economic opportunities and benefits from native title that the architects of the NTA espoused and aspired to. Enhanced leverage could foster partnerships between Native Title Parties and project proponents that give rise to projects that are better informed and designed, respectful of the place of Native Title Parties vis-à-vis Country, and create pathways for Native Title Holders to acquire equity and business experience in projects conducted on Country.

3.1 Weak procedural rights

The right to be informed and the right to comment do not provide Native Title Parties any leverage to engage future act proponents and government issuing authorities in negotiations of compensation payable for the impact of the future act on native title rights and interests. In effect, the categories of future acts that only give rise to these weaker procedural rights allow for future acts to be validly done without any consideration of compensation at the time. Nothing in the NTA sets obligations for the timing of compensation settlements for the effects

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of future acts on native title rights and interests so proponents and government issuing authorities that don't have to settle compensation to validly do a future act, don't.

Native Title Parties whose rights and interests are affected by such future acts then bear the cost burden of seeking compensation for those future acts through a separate process. When that process involves litigation, the costs thereby entailed may outweigh the value of the compensation itself.

Furthermore, Native Title Parties may lack the resources to record baseline information on the state of Country, and the exercise of rights and interests that exist in it, when notified of a proposed future act that gives rise to weak procedural rights. Unable to recover the cost of conducting such assessments from the proponents, Native Title Parties then bear the cost of quantifying their loss as a result of the future act in order to seek compensation at some future date. When the Native Title Parties have limited resources and evidence to demonstrate the degree of the impact on their native title rights and interests, it can be difficult to establish that quantum for the court and the liable party in compensation proceedings.

As outlined above, miscategorising future acts may result in government issuing authorities or proponents affording Native Title Parties procedural rights that do not support agreement-making in relation to the future act. This miscategorisation undermines the leverage the future act regime could give Native Title Holders to negotiate economic benefits or stakes in these projects and activities.

3.2 Lack of incentives for good faith negotiation

QSNTS observes that proponents will avoid engaging in good faith negotiations with Native Title Parties if they can get away with it.

As the ALRC's Issues Paper recognises, NNTT decisions statistically favour the doing of future acts and leave aside determinations of the compensation payable for those acts. When future acts proceed as a result of an NNTT decision that they may validly be done, the Native Title Party must pursue compensation separately. The risk of a NNTT determination for Native Title Parties is therefore that the proposed future act may be done without the timely payment of compensation. This gives more commercial leverage to the proponents in negotiations with Native Title Parties and is a disincentive to engage in those negotiations in good faith.

Sometimes, the proponents are sneaky or do not respect future act regime procedures at all. For example, proponents may take advantage of a period of dysfunction for a PBC, or a PBC's lack of legal representation, resources or operational maturity to apply for a range of permits on a determination area, knowing that the PBC may not be able to respond to notifications or may not be able to organise themselves to engage in negotiations. This results in a poor outcome for the PBC and the Native Title Holders, and nothing in the NTA requires the proponent or government issuing authority to support or engage in negotiations towards an agreement.

Level 4, 293 Queen Street
PO Box 10832, Adelaide Street
Brisbane QLD 4000
ABN: 88 114 581 556

P: (07) 3224 1200 | 1800 663 693
F: (07) 3229 9880
E: reception@qsnts.com.au
W: www.qsnts.com.au

Case study 6

A proponent telecommunications company providing wireless broadband internet and mobile network services to regional and remote areas was funded under the Commonwealth's Mobile Black Spot Program to construct telecommunications infrastructure, being a large telecommunications tower and base station. The proponent lodged a development application with the relevant local government council to construct the tower and base station on a reserve within the Native Title Holders' determination area where native title was recognised to exist. The native title holders' PBC was not notified of the proposed construction and became aware only due to the public advertisement of the proposal, seeking submissions from the general public. The PBC made submissions on behalf of the Native Title Holders and subsequently commenced negotiating a cultural heritage agreement with the proponent.

The negotiations broke down after the proponent refused to fund a face-to-face meeting with the PBC to discuss the proposal and the agreement. The proponent then with drew it development application, stating that the project was no longer feasible.

The proponent later advised that the tower and base station would be constructed on freehold land. The proponent stated that they had done "due diligence" by consulting a "local elder", who supported the development on the freehold land, even though the PBC was the registered Aboriginal cultural heritage body that the proponent was required to consult for that site under Queensland cultural heritage protection law. The proponent refused to provide details of the location of the construction and, when the location was discovered, later stated that the construction was elsewhere outside the determination area and that they considered any relevant consultations to have been undertaken.

The Native Title Holders lost their opportunity to engage in an agreement and then further lost to opportunity to protect their cultural heritage at the site of the tower and base station. Furthermore, there has been some disgruntlement and speculation amongst the Native Title Holders about the "local elder" who was apparently consulted by the proponents.

Small prospectors have very limited financial resources compared to large mining groups and rarely have the funds to support negotiations with Native Title Parties. Consequently, they struggle to support the Native Title Parties' right to negotiate and Native Title Parties struggle to negotiate agreements in relation to their proposed future acts.

3.3 The influence of expedited procedure

Considering, applying to object and engaging in an objection hearing in relation to the application of expedited procedure imposes the burden of time, cost and effort on the Native Title Party. This burden can deter Native Title Parties from pursuing stronger procedural rights than are afforded when the expedited procedure applies.

In addition, in QSNTS' experience, most proponents do not understand what native title is, what future acts are, how their proposed activity may affect native title and why they find themselves in front of the NNTT. This contributes to proponents treating Native Title Parties

Level 4, 293 Queen Street
PO Box 10832, Adelaide Street
Brisbane QLD 4000
ABN: 88 114 581 556
P: (07) 3224 1200 | 1800 663 693
F: (07) 3229 9880
E: reception@qsnts.com.au
W: www.qsnts.com.au

as unnecessarily hindering their permit applications and business activities at a critical stage for their ventures.

In QSNTS' view, the frequent/systematic/default application of expedited procedure raises the risk that proponents will expect to be able to undertake future acts without negotiating agreement to protect certain areas or activities, will systematically consider that the impact of their proposals is, or will be treated as, minimal, and will not engage in good faith negotiations with Native Title Parties in relation to these proposals. This may support the emergence of market expectations that do not factor in Native Title Party negotiations or compensation, and a commercial culture that is, at best, dismissive of Native Title Parties and their interests in the preservation of Country or considers the time and cost of agreement-making to be an unreasonable impost on their business. Such expectations undermine the recognition of Native Title Holders as legitimate stakeholders in proposals for their Country at both commercial and symbolic levels.

3.4 Cost burden of exercising procedural rights

As QSNTS does not receive Commonwealth funding to assist Native Title Parties to exercise all of their procedural rights in relation to future acts, QSNTS assists Native Title Parties to seek funding from proponents of project that trigger the right to negotiate. This is common practice across the native title sector of which most proponents are aware. However, sometimes proponents use the fact that they are paying for negotiations as leverage in negotiations. For example, the proponent may refuse to fund meetings of Native Title Parties to consider their proposal or to fund meetings in the Native Title Party's preferred location. QSNTS is also aware of proponents pressuring Native Title Parties to enter agreements without the benefit of a fully informative consultation or QSNTS' advice, arguing that the more the proponent pays for meetings and advice, the less they will be willing or able to offer the Native Title Party in a compensation package. QSNTS clients have been told words similar to "It can go to you, or it can go to your lawyers – it's your choice."

3.5 Missed opportunities

QSNTS staff and constituents say that the future acts regime misses opportunities to engage Native Title Parties to help inform the project at the design stage rather than as a tick-a-box exercise to complete in order.

These are missed opportunities to encourage proponents to further their corporate social responsibility, develop place-based relationships and their own knowledge by negotiating equity partnerships with Native Title Parties.

Case study 7

A proponent approached a Native Title Party to enter into a Cultural Heritage Management Plan (**CHMP**) for a project over native title land. At the time the Native Title Party was contacted, the project area and project design was largely finalised. The Native Title Party

Level 4, 293 Queen Street
PO Box 10832, Adelaide Street
Brisbane QLD 4000
ABN: 88 114 581 556

P: (07) 3224 1200 | 1800 663 693
F: (07) 3229 9880
E: reception@qsnts.com.au
W: www.qsnts.com.au

was frustrated not to have been involved in the project design from the start and were concerned that the project was to be constructed over, and impact, waterways that are part of a significant dreaming story; that the location was a swampy area; and the area include significant and old vegetation. The Native Title Party wanted to protect as many trees as possible, and through CHMP negotiations, the proponent made significant changes to the design and footprint of the project, having to come up with innovative solutions.

The proponent ended up spending significantly more money to redesign the project due to the hiring of additional experts, site visits and regular meetings with the Native Title Party. CHMP negotiation and project consultation happened quickly due to contractual timeframes.

While the Native Title Party was appreciative of the proponent's efforts to redesign the project, the Native Title Party noted that most of the issues could have been alleviated and addressed at the outset, if the proponent approached the Native Title Party at the design phase of the project.

4. Managing interests in compensation

The proponent-focused nature of the future acts regime deeply affects agreements making, which are often touted as the solution to economic disadvantage suffered by QSNTS' clients.

Agreement making that is focused purely on proponents securing the validation they need for their project to proceed has led to "anyone who may hold native title" under the Area Agreement provisions of the NTA becoming signatories to the resulting Indigenous Land Use Agreement. The assertions of these signatories are not tested and there is no community development work done to consider the identification of traditional laws and customs that relate to management of country and decision making, let alone the community's aspirations. This leads to a lack of community cohesion, difficulties in achieving native title recognition at a later stage, and mismanagement of money.

This scenario has all clearly played out, for example, in the litigation associated with the Western Downs Arrow Energy litigation. The ongoing impacts of those negotiations have greatly influenced QSNTS' ability to assist its constituents to achieve native title recognition in the associated area.

5. Future Act Regime reforms – a QSNTS wish list

It is QSNTS' firm view that the future act regime is not fit for purpose, nor is it consistent with the NTA's preamble. It does nothing to promote self-determination, economic development or to allow First Nations groups to protect their Country, their way.

Level 4, 293 Queen Street
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A complete shift towards First Nations participation in the system is necessary, to move the focus away from categories of acts that are "valid", toward listening to First Nations people about matters that impact their Country. Two key principles are required to achieve this.

a) Treating Native Title Parties as landowners

All rights afforded to "landowners" should be provided to Native Title Parties. This must be the starting point.

b) Involving Native Title Parties early and streamlining their participation.

The ALRC will be familiar with the Queensland Law Reform Commission's (**QLRC**) review into mining leases. While that review has now been terminated by the current Queensland government, the proposed processes put forward by the QLRC were strongly supported by QSNTS. The proposal to include First Nations people in decision making, to recognise the need for First Nations people to be involved in both environmental and resource related processes and to protect their interests through a mandated process for statutory decision making flips the focus to free, prior and informed consent.

QSNTS' submissions to the QLRC's review are relevant to the comments made in this paper and are attached for the ALRC's consideration.

QSNTS also urges the ALRC to consider the work being done by the First Nations Cultural Heritage Alliance jointly with the Commonwealth Government. The principles under development in this space, are and should be directly transferrable as to the way in which proponents are required to engage with QSNTS constituents. That is, the engagement comes first, the "validation" comes later.

QSNTS
Queensland South Native Title Services

Level 4, 293 Queen Street
PO Box 10832, Adelaide Street
Brisbane QLD 4000
ABN: 88 114 581 556

P: (07) 3224 1200 | 1800 663 693
F: (07) 3229 9880
E: reception@qsnts.com.au
W: www.qsnts.com.au

21 October 2024

President Fleur Kingham

Chair of the Queensland Law Reform Commission

By email: QLRCCommunications@justice.qld.gov.au

CC: [redacted]

Dear President Kingham,

Submissions to the Queensland Law Reform Commission

QSNTS refers to previous submissions provided in response to the Commission's Background Paper 2. QSNTS acknowledges that the general themes raised have been considered in the development of options presented by the QLRC in its two discussion papers. QSNTS is generally supportive of all six proposals put forward by the QLRC and believes these proposals take significant steps towards embedding Free, Prior and Informed Consent (FPIC) and valuing traditional knowledge in decision-making processes. The proposed enhanced role of the Land Court also provides recourse to the Traditional Owner Groups who, in QSNTS's experience rarely have their concerns for country genuinely addressed. QSNTS uses the term Traditional Owner groups deliberately, to describe those First Nations people with cultural responsibility for the country subject to mining lease or mining activity. This is relevant to QSNTS's response to some of QLRC's proposals.

QSNTS provides the following general submissions, as well as direct responses to the questions posed in the annexed table.

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1. Integration of Traditional Owner Consultation and Consent

QSNTS is supportive of the concepts of increased Indigenous participation in both the mining application process and the environmental authority (EA) application process as outlined in proposals 1(c) and P3. However, QSNTS emphasises that such participation should be:

a) **From the Traditional Owner group whose country is impacted by the mining lease**. This participation should be facilitated through existing or currently proposed structures.

b) **In the form of decision-making power**. The participation should enable Traditional Owners to make decisions about whether the lease should be granted and, if granted, what conditions should be imposed to mitigate damage to Country.

c) **If decision-making power is not granted**, the decision-maker should provide a detailed explanation outlining how the advice from the relevant Traditional Owner group has been taken into account and addressed.

Level 4, 293 Queen Street
PO Box 10832, Adelaide Street
Brisbane QLD 4000
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W: www.qsnts.com.au

In relation to point (a), QSNTS suggests the QLRC consider the proposed Traditional Owner Representative Institution Model, currently being discussed at a Federal level in the context of consultation and consent in offshore energy projects and cultural heritage reforms (see Annexure 1 to the NNTT's Discussion Paper on Traditional Owners and Australian Offshore Energy Projects). Capitalising on existing or proposed structures would reduce the significant administrative load on individuals, who often serve in voluntary capacities. Should existing Traditional Owner representative institutions, such as Registered Native Title Bodies Corporate (RNTBCs) and registered native title claimants, take on this additional role, it is imperative that proper resourcing be provided, provision of that resourcing should be met by the proponent.

Involving RNTBCs, claimants and Traditional Owners who may not have a claim on foot in decision-making (or consultation) is consistent with their existing status under the *Native Title Act 1993* (Cth.) (**NTA**). QSNTS discloses that, in the context of the recent Lake Eyre Basin Regulatory Impact Statement process and negotiations regarding quarrying, RNTBC clients expressed frustration at the lack of integration between resource activity approvals, environmental authority approvals, and their exclusion from either process.

As raised in our March submissions, it is crucial that Indigenous Peoples have a legislated and protected ability to participate before the decision-making stage, with available recourse if they are aggrieved by a decision. This participation should extend to the EA process, a position reflected in the QLRC proposals, which QSNTS supports.

Our constituents' current experience is that decision-makers responsible for resource-related permits, acting on the environmental approval process (e.g., in quarrying or the expedited procedure), are not and cannot be fully aware of the cumulative impact such activities have on Country. The relevant Traditional Owner groups, with cultural responsibilities to care for Country (for example, RNTBCs), are the only parties capable of comprehensively assessing those cumulative impacts. Traditional Owners witness the damage, and understand the impact, caused by multiple quarries or drill sites on their land, while government staff, assessing applications in isolation and in the abstract, cannot. In the case of RNTBCs, they are already involved "on the ground", via the future acts regime under the NTA.

It follows that the relevant Traditional Owners are best placed to make decisions—or at the very least, provide mandated input—on these application processes. QSNTS cautions against an Advisory Committee having decision-making powers or in the provision of input unless the committee is required to *bona fide* consult with relevant Traditional Owners who hold cultural authority over the impacted Country.

QSNTS is however supportive of proposals for increased First Nations involvement, repeating that consideration should be given to the role of existing or proposed structures to avoid creating unnecessary new entities with duplicate roles across different pieces of legislations.

Level 4, 293 Queen Street
PO Box 10832, Adelaide Street
Brisbane QLD 4000
ABN: 88 114 581 556

P: (07) 3224 1200 | 1800 663 693
F: (07) 3229 9880
E: reception@qsnts.com.au
W: www.qsnts.com.au

2. Statutory Criteria for Decision-Making

QSNTS supports the imposition of statutory criteria on decision-makers. However, based on our experience with the State's application of the expedited procedure under s237 of the NTA, we have identified the following issues:

i) **Lack of transparency**: It is unclear how and if statutory criteria are applied before a decision is made, as there is no requirement to publish reasons for the decision.

ii) **Lack of consultation**: There is no requirement for the decision-maker to consult with the relevant Aboriginal or Torres Strait Islander groups before making a decision.

QSNTS believes that Traditional Owner groups are best placed to make decisions affecting their Country. If the legislation does not require Traditional Owners to make the decision, there must be a statutory requirement to involve them in applying any criteria imposed on decision-makers in the EA or lease process. Where criteria exist, they must be applied in consultation with the relevant Traditional Owner groups. Under their traditional laws and customs, Traditional Owners are uniquely qualified to either make decisions or, at a minimum, provide the advice necessary for decision-makers to apply the criteria appropriately.

In terms of drafting the legislative criteria for an EA (or mining lease application), QSNTS encourages the QLRC to develop that criteria in consultation with Queensland's Traditional Owners. From experience, QSNTS can indicate that the "cumulative" impact of activities on country is a common theme expressed by its clients which is generally not currently considered by decision makers who are assessing a single application in isolation.

Finally, decision-makers must publish their decisions, including how they regarded the views of the relevant Traditional Owner group. These decisions should be open to challenge, consistent with the QLRC's proposal for the Land Court's merits and judicial review functions.

3. Conclusion

QSNTS strongly supports the QLRC's proposals, particularly those aimed at enhancing the participation of Traditional Owner groups in decision-making processes related to mining leases and environmental authority applications. By embedding FPIC and giving Traditional Owners a greater role in decision-making, the QLRC's proposals represent a significant step towards recognising and valuing traditional knowledge and cultural responsibilities to Country.

4. Specific Responses

Question	Response
1	Generally, yes. As outlined in our March submissions, given our constituents' constant battle to be considered and treated as "landholders" under legislation

Level 4, 293 Queen Street
PO Box 10832, Adelaide Street
Brisbane QLD 4000
ABN: 88 114 581 556

P: (07) 3224 1200 | 1800 663 693
F: (07) 3229 9880
E: reception@qsnts.com.au
W: www.qsnts.com.au

Question	Response
	and in the policy context, we consider that any reform should put traditional owners on an equal footing with any other tenure holder. It follows that "Equitability" should be another guiding principle in reviewing and reforming the objections process.
2	See March submissions.
3	Strongly support an integrated participation process, given the links between mining activity and environmental approval processes. We agree on increased Indigenous input (although we advocate for decision-making powers as opposed to mere consultation). See above submissions for further comments regarding streamlining and improving consent and consultation from the relevant Traditional Owner groups.
4.	See above submissions.
5.	No specific comment.
6.	See above submissions.
7.	See above submission, particularly regarding ensuring the relevant traditional owners, with cultural responsibility for the country, are the ones involved in decision-making (or consultation).
8.	Supportive, provided that resources to Traditional Owner institutions (e.g. RNTBCs) are provided to support access to the portal.
9.	Early information to the relevant traditional owners (e.g. RNTBCs and registered claimants) during the "concept" stage of a project, consistent with the principles of FPIC, ideally before any approvals are applied for. See March submissions.
10.	See response to (9) above.
11.	See response to (9) above.
12.	Generally supportive; however, see above submissions regarding decision-making/consultation with the relevant traditional owner groups (e.g. RNTBCs or registered native title claimants).
13.	See above submissions. Criteria to be workshopped with traditional owners with working knowledge and experience.
14.	Strongly support. See above submissions regarding involving the relevant traditional owner group (e.g. RNTBC or registered native title claimant).
15.	See response to 14
16	See response, and above submissions re the publishing of reasons.
17	"Suitability" criteria should include: a) Willingness to genuinely engage with relevant traditional owner groups. b) An ability to fund the engagement and any proposals put forward by the traditional owner group.
18.	Strongly support.
19	No specific comment
20	Yes
21	Proponent pays
22	Further consideration should be given to how the Land Court's processes will interact with the role of the NNTT's future act determination function. The integrated approach proposed by the QLRC is an approach that QSNTS would advocate for across the resource and future act regime. That is, our clients seek further involvement in the EA process, which tends to occur before notification under the NTA, leading to two queries:

QSNTS
Queensland South Native Title Services

Level 4, 293 Queen Street
PO Box 10832, Adelaide Street
Brisbane QLD 4000
ABN: 88 114 581 556

P: (07) 3224 1200 | 1800 663 693
F: (07) 3229 9880
E: reception@qsnts.com.au
W: www.qsnts.com.au

Question	Response
	a) How will registered native title claimants and RNTBCs navigate and utilise the future act regime and the proposed integrated mining lease process to have a genuine say about the proposal? b) What room is there to have an integrated approach applied to all resource activities, including exploration?
23-26	No specific comments

Yours faithfully,

[redacted]

Sheree Sharma

Acting Principal Lawyer

QSNTS
Queensland South Native Title Services

Level 4, 293 Queen Street
PO Box 10832, Adelaide Street
Brisbane QLD 4000
ABN 88 114 581 556

P 07 3224 1200
Free Call 1800 663 693
E reception@qsnts.com.au
W qsnts.com.au

8 March 2024

President Fleur Kingham

Chair of the Queensland Law Reform Commission

By email: QLRCCommunications@justice.qld.gov.au

CC: [redacted]

Dear President Kingham,

We refer to the Mining Lease Objections Review, Background Paper 2. While we understand there will be further opportunity for comments and consultation, we are taking the opportunity to respond to the QLRC's request for any views on key trends.

QSNTS is a native title representative body with statutory functions under s203B of the *Native Title Act 1993* (Cth) (**NTA**).

QSNTS's constituents include:

a) Native title holders, represented by Registered Prescribed Bodies Corporate (**RNTBCs**). RNTBCs manage native title rights and interests recognised by the Federal Court of Australia

b) Native title claimants who have made an application in the Federal Court of Australia to have their native title rights and interests recognised.

c) First Nations who have not yet made a claim or who do not have recognised native title rights and interests but still have rights and responsibilities under their traditional laws and customs.

These comments collectively refer to our above constituents as "First Nations" people or constituents and the rights they hold, whether via recognised determination or not as "First Nations rights".

First Nations' Rights and Interests

Many of our First Nations constituents hold the following recognised rights under either a native title determination, the NTA, the *Human Rights Act 2019* (Qld), and/or their traditional laws and customs:

a) rights and interests recognised under various native title determinations, relevantly:
    i. the right to possession, occupation, use and enjoyment of the area to the exclusion of all others
    ii. hunt, fish and gather from the land and waters of the area;
    iii. take and use the Natural Resources from the land of the Water in the area
    iv. take and use the Water of the area
    v. conduct spiritual, cultural and religious activities and ceremonies on the area;
    vi. maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas from harm;

Level 4, 293 Queen Street
PO Box 10832, Adelaide Street
Brisbane QLD 4000
ABN 88 114 581 556

P 07 3224 1200
Free Call 1800 663 693
E reception@qsnts.com.au
W qsnts.com.au

vii. teach on the area the physical and spiritual attributes of the area

b) the right to comment in relation to the management and regulation of water

c) the human right:

i. to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings; and

ii. to enjoy, maintain, control, protect, develop and use their language, including traditional cultural expressions; and

iii. to enjoy, maintain, control, protect and develop their kinship ties; and

iv. to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom; and

v. to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.

At (4) of the terms of reference for the QLRC's review, the QLRC is asked to consider how any recommendations would interact with decisions under other relevant legislation including the *Aboriginal Cultural Heritage 2003* (QLD) *, Native Title Act 1993* (Cth) and the *Human Rights Act 2019* (QLD). It is on this basis that QSNTS provides the following comments. We hope that by providing these comments prior to options being developed, these key concerns can be addressed in any proposals put forward in the consultation paper scheduled to be released in May 2024.

Key Trends – First Nations as Landholders and the need for Free, Prior and Informed Consent

QSNTS has long advocated for better outcomes for First Nations People in relation to their involvement in the resource industry. It our experience that current regulations have generally failed First Nations and have not afforded them a voice in decisions that impact *their* country.

For several years in relation to small scale mining leases, our constituents have faced the perverse outcome where a permit is granted to which the right to negotiate under the NTA applies (notionally one of the "highest" rights available under the NTA future act provisions, yet, the proponent is so miserly, often citing the "small scale" nature of their project that they assert an inability to resource the costs associated with the protection of Aboriginal cultural heritage. Impecuniosity ought not be an excuse to avoid obligations to protect Indigenous Cultural Heritage.

With no legislated minimum standards (such as the Native Title Protection Conditions (NTPC)) imposing cultural heritage protection protocols or payments in relation to small scale mining, and no mention of the protection of Aboriginal cultural heritage in the small mining code, First Nations are often faced with:

- Terrible agreements that don't cover the full costs associated with Indigenous Peoples protecting their cultural heritage and/or compromised clearance processes that do not comprehensively assess or protect Indigenous cultural heritage

Level 4, 293 Queen Street
PO Box 10832, Adelaide Street
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P 07 3224 1200
Free Call 1800 663 693
E reception@qsnts.com.au
W qsnts.com.au

- Having the matter referred to the NNTT, with a real risk of the act being permitted to go ahead under conditions proposed by the *proponent* despite the Native Title Party clearly stating its desire to, at a minimum, undertake a cultural heritage survey of the area in question. See for example, the outcome in See QF2021/0005 *Stephen Christopher Purse v Guwa-Koa Aboriginal Corporation RNTBC and Another* [2022] NNTTA 7 (4 February 2022).

The Commission is no doubt aware that a failure to properly protect and consider the rights of First Nation's people may result in the State dealing with an increased compensation liability, particularly as it relates to the cultural loss component discussed by the High Court in the *Timber Creek* decision.

Regarding exploration, while we acknowledge that the State's application of the expedited procedure for exploration permits under the NTA does not fall within the scope of the review, for the purpose of identifying general themes, it is important to note that the substandard outcomes that result from negotiations for small scale mining are replicated when the expedited procedure is applied to exploration.

Across our representative region, the State applies the expedited procedure (a mechanism under the NTA) to almost all exploration permits. The State asserts that it can process an application under the expedited procedure because it considers that its NTPC provide adequate protection of native title and cultural heritage for that area (i.e. the activities to be performed there won't significantly affect native title rights and interests).

The expedited procedure is applied by the State to almost all permits under a "blanket" policy, despite the requirement that procedure only apply if the criteria under s237 of the NTA are met. We consider the expedited procedure to be one of the most significant threats to our constituents' Indigenous cultural heritage. We are able to provide further information on our experience with the expedited procedure, if the Commission considers that would be of assistance.

Given the State's desire to accelerate the development of the critical minerals industry we hold grave concerns that this fast tracking will be at the expense of First Nations peoples' rights and interests. This is particularly so if the State applies its "blanket" expedited procedure policy to the exploration of critical minerals and/or develops a fast-tracked process for the approval of mining leases associated with the critical mineral industry. Such action by the State would be consistent with the State's key objective to "move faster and smarter" under its Critical Minerals Strategy. Should the policy be implemented in this way, the policy has the capacity to adversely affect Indigenous Peoples and Communities in Queensland by impacting on native title rights and cultural heritage (be that cultural heritage tangible or intangible).

It is positive that the Commission identifies the need to balance fast tracking the development of the critical minerals sector with effective environmental protections and adequate opportunities for community participation.

In terms of what this looks like for First Nations People, it should be apparent from the broad range of rights outlined above that First Nations people are landholders and should be treated as such. That is, First Nations People should be afforded the same procedural rights as an "affected person" under *Mineral Resources Act*.

Further, to avoid the likelihood of objections to mining leases by First Nations People and to truly incorporate principles of free, prior and informed consent, consistent with the special Human Rights

Level 4, 293 Queen Street
PO Box 10832, Adelaide Street
Brisbane QLD 4000
ABN 88 114 581 556

P 07 3224 1200
Free Call 1800 663 693
E reception@qsnts.com.au
W qsnts.com.au

afforded to First Nations people and their recognised native title rights, First Nations people must be provided an opportunity to contribute to:

- The Application requirements for the grant of a mining lease, including for example, demonstrated:
    - Engagement with the relevant First Nations People about the proposed lease
    - Understanding of the Applicant's duty not to harm Indigenous Cultural Heritage
    - Ability to fund the affected First Nation's preferred cultural heritage clearances process, community benefits, capacity development and business opportunities.
- The Environmental Authority for a mining activity relating to a mining lease so that their unique traditional knowledge is properly considered.

For these requirements to lead to meaningful action, an opportunity to engage with the Chief Executive (as defined in the *Mineral Resources Act*) where First Nation's concerns about the protection of their country and cultural heritage is not addressed to the satisfaction of the First Nations group in the Environmental Authority or in the Lease Application process, is also necessary.

A statutory right to raise concerns of this kind with the decision maker and to have the concerns actioned is preferrable to litigation in the Land Court given our constituents limited resources.

Engagement

Meaningful engagement is difficult to achieve via a call for written submissions.

Seeking the views of First Nations People must be seen as a *process*. Involvement of First Nations People starts at the beginning, when the options are being designed, not at the "end" when all opportunity to contribute and shape the options or the project have been stripped away.

We understand that the Commission is committed to meaningful engagement with our First Nations constituents. We encourage the Commission to workshop any proposed options with our constituents and to be open to additional options presented by the affected First Nations.

As indicated by QSNTS's CEO Tim Wishart, as a representative body with a statutory function to promote understanding about native title, and to consult with First Nations affected by matters relating to native title, we would welcome the opportunity to work with the Commission to prepare a First Nations engagement plan so that a process of ongoing and meaningful consultation can take place.

QSNTS in its own capacity also looks forward to providing more detailed and specific comments once the May consultation Paper is released.

Yours faithfully,

[redacted]

Sheree Sharma

Acting Principal Lawyer